**(2024) 03 PAT CK 0053**

**In the Patna High Court**

**Case No :** First Appeal No. 83 Of 2019

Chairman, Njmc Ltd — APPELLANT

Vs

Umesh Kumar Chamaria — RESPONDENT

**Date of Decision :** 13-03-2024

**Acts Referred:**

Code of Civil Procedure, 1908 — Section 80, Order 39 Rule 1, Order 39 Rule 2
Jute Companies (Nationalization) Act, 1980 — Section 2(c), 2(d), 3, 4, 4(1), 9, 17, 30
Industries (Development and Regulation) Act, 1951 — Section 1(3), 2, 3(bb), 3(d), 18AA, 18AA(1), 18AA(1)(b)
Limitation Act, 1963 — Section 27

**Citation :** (2024) 03 PAT CK 0053

**Hon'ble Judges :** Khatim Reza, J

**Bench :** Single Bench

**Advocate :** Shekhar Singh, Chitranjan Sinha, Ajay Kumar, Pradeep Kumar

**Final Decision :** Dismissed

# Judgement

1. Heard Mr. Shekhar Singh, learned counsel for the appellants, Mr. Chitranjan Sinha, learned senior counsel for respondent nos.1 to 4 and Mr. Pradeep Kumar, learned counsel for respondent no. 5 – Union of India.

2. The present appeal has been preferred against the judgment and decreed dated 30-4-2019, passed by learned Sub-Judge-VI, Katihar in Title Suit No. 158 of 2011, whereby the learned Trial Court has decreed the suit on contest but without cost, and declared that the plaintiffs are having a perfect and valid right title and interest over the suit land, and the defendants and their employees, servants, assignee were restrained permanently from interfering the peaceful possession of the plaintiffs over the suit land.

3. Defendants No. 2 and 3 are the appellants, and Plaintiffs are respondent nos. 1 to 4. Defendant No. 3 is the respondent no 5.

4. The plaintiffs filed the aforesaid Title Suit for declaration of title and confirmation of position of the suit land and also for decree of permanent

injunction for restraining the defendants from interfering into the peaceful possession of the plaintiffs over the suit lands.

5. As per the case of the plaintiffs, the suit land is inherited by the plaintiffs and they are continuing in possession thereof. The husband of the plaintiff no. 1 (Sheela Devi Chamaria), namely, Motilal Chamaria, purchased 15 acres of land through registered sale deed dated 04.08.1954 in his name and came in possession of entire 15 acres of land and enjoyed usufructs of the said land by way of its cultivation. Babu Motilal Chamaria was also a mill owner of Rai Bahadur Hurdutroy Motilal Jute Mills Private Limited, commonly known as RBHM Jute Mills, Katihar having its own identity. The further case of the plaintiffs is that the suit lands were never the part and parcel of the said jute mill property since Motilal Chamaria acquired suit land for other purpose. In the course of time, RBHM Jute Mills became sick as such nationalization of the said jute mill took effect under the Jute Companies Nationalization Act, 1980, Act 62 of 1980. Schedule 1 of the said Act, RBHM Jute Mill Private Limited, Katihar and vested in Union of India and became the unit of Central Government and the management of the undertakings of the said Jute Mills was taken over by the Central Government under Industries (Development and Regulation) Act, 1951 ( hereinafter referred to as ‘the Act of 1951), but the suit land continued to be the personal property of Motilal Chamaria. The assets, liabilities, properties, duly recorded and listed by RBHM Jute Mills was found in occupation of an area of 17 Bighas and 4 Kathas and over the said land, mill plant and other appurtenance of RBHM Mills is in existence which has nothing to do with the aforesaid 15 acres of land, which is the personal acquired land of Motilal Chamaria. A separate Jamabandi of Motilal Chamaria was running in his name in personal capacity which was created from Jamabandi No. 900 and a separate Jamabandi no. 76 was created in the name of Motilal Chamaria with respect to the suit land and he used to pay rent to the Government. However, without giving any notice to the Motilal Chamaria, a wrong municipal survey record was made with respect to the suit land on wrong notion that whatever property held by Motilal Chamaria belonged to RBHM Jute Mills, Katihar. It was wrongly recorded in municipal survey operation in the name of RBHM Jute Mills, Katihar. The said land continued in khas possession of Motilal Chamaria, which was wrongly and illegally recorded in the name of RBHM Jute Mills Katihar for an area of 14 acres 17 decimals 8 kari of land in place of Motilal Chamaria, but the later was in khas possession over his acquired land at the time of survey operation which is more or less to the extent of his acquisition. Motilal Chamaria used to reside in Calcutta while RBHM Jute Mills became sick. Meanwhile municipal survey operation started and finally published in the year 1985 in which by mistake the land in suit was wrongly and illegally published in the name of RBHM Jute Mills in place of Motilal Chamaria. It is further pleaded that whatever land was in campus of RBHM Jute Mills, is in existence to mention here that whenever report (appointed by the Central Government) of assets of RBHM Jute Mills considered by the Union Government for purpose of awarding compensation to Motilal

 

Chamaria for his industrial unit, the suit land have not been shown as properties of RBHM Jute Mills as such, in the register of Union of India, there is no reference of suit land as the same were not found as assets of RBHM Jute Mills. Nowhere, in the inventory of assets of RBHM Jute Mills description of suit land is given. It is further case of the plaintiffs that the wrong recording of the Municipal Survey khatiyan in respect of the suit land does not jeopardize right, title, interest and possession of the plaintiffs in any way. Motilal Chamaria died leaving behind these plaintiffs as heirs and legal representatives, and they came to know that the jamabandi in the name of Motilal Chamaria was cancelled, but wrong recording of Municipal Survey khatiyan did not extinguish the right, title and interest of the plaintiffs and when the representative of the defendants/ appellants threatened the plaintiffs on 1st April, 2011 to dispossess the plaintiffs from the suit land, then the plaintiffs filed the suit.

6. On summon, defendant nos. 2 and 3 filed their joint written statement and contested the suit on the ground of its non-maintainability as barred by the law of limitation and also on the ground that the suit is baseless, devoid of material particulars and that the plaintiffs suppressed the material facts and they submitted that by virtue of sale deed dated 04-08-1954, Rai Bahadur Motilal Chamariya, RBHM Jute Mills purchased the land in question for a consideration of Rs. 20,000/- and, thereafter, the said Mill became sick and has been taken over by the Central Government under the Jute Companies (Nationalization) Act, 1980 ( hereinafter referred to as 'the Act of 1980') and all the assets, right, title and interest of the Jute Company was vested in the Central Government and denied the cause of action ever arose on 01.04.2011 as alleged in the plaint. The Act came into force on 21st December 1980 and in terms of the provisions, as contained in Section 3 of the said Act, the undertakings of every Jute Company, including the Jute Company in question, and the right, title and interest of every Jute Company in relation to its undertakings, by virtue of the said Act, stood transferred and vested, in the Central Government and thereafter to the Government Company, namely, NJMC. It is further contended that prior to nationalization as aforesaid Rai Bahadur Hurdutroy Motilal Jute Mills (RBHM Jute Mills) Pvt. Ltd became sick and referred to Board of Industrial and Financial Reconstruction (BIFR), vide Case No. 506 of 1993; the Central Government in exercise of its powers conferred by Clause- A of sub- section (1) of Section 18AA of the Act of 1951 took over the management of the said RBHM Jute Mills Pvt. Ltd. Subsequently, under the provisions of the Act of 1980, RBHM Jute Mills Pvt. Ltd. was nationalized and was listed in NJMC w.e.f. 21st December 1980, with all its assets and liabilities. After vesting of RBHM Jute Mills in NJMC Ltd, NJMC applied for creation of Jamabandi for the landed properties belonging to RBHM Katihar, vide Case No. 87/83-84. Accordingly, the office of the Circle Officer published a general notice inviting objection, if any. No objection was received from any corner and following the due procedure, created the Jamabandi in the name of NJMC Ltd. for all the landed properties of RBHM, Katihar and the defendants paid rent to the Government as well as municipality and is in

 

continuous possession of the land vested upon defendants.

7. Further case of the defendants is that Board of Industrial and Financial Reconstruction (BIFR) vide case No. 506 of 1993 in its proceeding have considered the value of this land for revival of RBHM Jute Mills. The IDBI was appointed as operating agency and conducted meeting with all stakeholders and published the revival plan in newspapers to invite claims etc. before approval of scheme by BIFR. The BIFR approved the revival plan of NJMC on 31st March 2011 after following due process under S.I.C.A. Act. The plaintiffs did not choose to raise any grievance before BIFR. The plaintiffs have no legal right, title, interest and possession over the land in question and the alleged claim of plaintiffs is not tenable in law. The plaintiffs have fabricated a story in the suit regarding the two Jamabandis, i.e., one for the land of RBHM Jute Mills Ltd. and another for personal lands of Late Moti Lal Chamaria which is absolutely false. The suit land is a part of land of RBHM Jute Mills which had been vested in NJMC in its totality in the year 1980. Consequent upon the said Act of 1980, the NJMC from such date of vesting are in continuous possession without any interaction from any quarters whatsoever and the plaintiffs have full knowledge about the said possession of the defendants.

8. Learned court below on the basis of the pleadings of the parties framed the following issues:-

"(i) Whether the suit as framed is maintainable?

(ii) Have the plaintiffs got any cause of action to file the suit against the defendant?

(iii) Whether the suit is barred by law of limitation, estoppel, waiver and acquiescence?

(iv) Whether the suit has been properly filed and sufficient court fee paid?

(v) Whether the plaintiffs are entitled to decree for declaration of title and confirmation of possession in respect of the suit land against the defendants?

(vi) Whether the plaintiffs are entitled to decree of permanent injunction against the defendants restraining the defendants from interfering into the peaceful possession of the plaintiffs over the suit land?

(vii). Whether the plaintiffs have got full right, title, interest and possession over the suit land as its 16 Anna owner and these defendants have got no manner of rights, title, interest and possession over the same?

(viii). Any other relief or reliefs, if any, for which plaintiffs are entitled for?"

9. Learned Sub Judge took up the issue nos. (v), (vi) & (vii) at first and came to the conclusion that it is apparent from the sale deed that the suit land purchased by virtue of sale deed Exhibit 5/A was never purchased in the name of RBHM Jute Mills. However, it was purchased in the name of Motilal Chamaria whose

 

legal heirs are the plaintiffs. It is also held that nothing is on the record to show that how the ownership of the suit land was transferred to the RBHM Jute Mills and merely entries in the Municipal Survey khatiyan cannot be said that the title of the suit land was of RBHM Jute Mills, and further declared that the plaintiffs have lawful right title interest and possession over the suit land which never belongs to the defendants at any point of time and thus the plaintiffs are entitled for decree of declaration of their title and confirmation of possession as well as decree of permanent injunction.

10. So far issue no. (ii) and (iii) are concerned, learned lower court has held that the plaintiffs have valid cause of action for the suit and the same is not hit by the law of limitation, estoppel, waiver and acquiescence. These issues were also decided in favour of the plaintiffs against the defendants.

11. The appellants being aggrieved and dissatisfied by the impugned judgment and decree, preferred this appeal challenging the maintainability of the suit.

12. Mr. Shekhar Singh, learned counsel for the appellants arguing in this appeal has submitted that Section 30 of the Act of 1980, provides that no suit, prosecution or other legal proceedings shall lie against the Jute Manufacturers Corporation for anything which is done in good faith or intended to be done under the said Act. The property in suit have been acquired by, vested in and transferred to the Central Government and Section 30 bars filing of the suit in such matters against the central government, its officials and Jute manufacturers Corporation or other persons authorized by the Government or Corporation.

13. If the plaintiffs had any grievance at the relevant time they could have filed the grievance/claim before the Commissioner as prescribed under Section 17 of the Act of 1980. It is submitted that learned Trial Court has not given any specific finding with regard to the issue no. (i) i.e. maintainability of the suit and hence the impugned judgment is bad in the eye of law.

14. So far cause of action for this suit against the defendants/appellants is concerned, the plaintiffs have adduced no evidence or have brought nothing on record to show that the cause of action arose on 01.04.2011, when a threatening was made to dispossess the plaintiffs. On the contrary, the evidences adduced by the defendants have been brought on record as Ext. A, the certified copy of Municipal Survey Khatiyan, 1985, Ext.- B/1, certified copy of order dated 07.02.1983 passed in Miscellaneous Case No. 4/1982 and 8/1982, the Municipal Holding tax receipt dated 03.06.2013, Ext. E, the revenue receipts, and Ext. F, the copies of the assessment list of Katihar Municipality for the year 1988-89 with respect to the entries No. 33 to 48. It is apparent from the evidences to show that the suit land had come in peaceful possession of appellants/ defendants upon Nationalization of the Jute Mill.

15. The plaintiffs-respondents failed to prove that the cause of action arose on 01.04.2011. The pleader notice dated 05.05.2011 (Ext.2) does not create any cause of action in favour of the plaintiffs. Reliance in this regard has been placed

 

in the case of Niranjan Agarwalla Vs. Union of India reported in AIR 1960 Cal 391, wherein it has been held that:-

“notice under Section 80 of the Civil Procedure Code is not a part of the plaintiff’s cause of action although it is a condition precedent which must be pleaded and, if necessary, proved, unless waived, before a suit can be instituted and maintained against the Government.”

16. So far issue no. (iii) is concerned, whether the suit is barred by the Law of Limitation, estoppel, waiver and acquiescence, it is submitted that the trial court without dealing with the submissions raised on behalf of the appellants/ defendants decided the issue in favour of the plaintiffs. The suit properties were vested in the Central Government and NJMC in the light of Act of 1980. By virtue of the said Act, the suit property came in exclusive possession of the defendants as is evident from the exhibits. It is further submitted that exhibits B-1 clearly shows that Vijay Kumar Chamaria, the father of the original plaintiff no. 5 i.e. Anirudh Chamaria, had filed a Miscellaneous Case No. 4/82 / 8/82 against the entry of the suit property in revenue records in favour of the appellant which was dismissed vide order dated 07.02.1983. In the aforesaid order, the suit properties bearing Plot No. 575 and 579 have been mentioned along with the other properties and it has also been recorded in the order that the said properties are in the possession and control of the Jute Mill.

17. Actually, the cause of action arose in the year 1980 as well as in the year 1983 whereas the suit has been filed in the year 2011. Therefore, the suit is hopelessly barred by the law of limitation.

18. So far issue no. (v), (vi) and (vii) are concerned, it is submitted that issue no. (v) is with regard to confirmation of possession in respect of the suit land against the defendants. However, the learned trial court has not given any definite finding with regard to possession of the suit land in the impugned judgment.

19. The land, in question, was acquired by the promoter for the benefit of the company and it remained vested in the company. Prior to acquisition under the provisions of the Act of 1980, the land in question was in use of the company and there were constructions over the suit land which were in the use of the Company. Even the original plaintiff namely, Sheela Devi Chamaria (P.W.-7) in her cross-examination has admitted that in the north side of the disputed land that they have constructed houses for the servants which shows that to some extent she has admitted the construction over the disputed land and it contradicts the statement of other witnesses of plaintiff’s side who have said that there was no construction on the disputed plot. The land in question at the time of nationalization pursuant to the provisions of Sections 3 and 4 of the Act of 1980 stood transferred/ vested to in the Central Government.

20. Plaintiffs have failed to bring on record any cogent evidences to show that subsequent to nationalization, the suit property was in their possession ever. On

 

the other hand, the defendants have produced enough evidences coupled with entry made in Municipal and Revenue records to show that the land has been coming in their peaceful possession.

21. Reliance has been placed on the judgment in the case of Vishwa Vijay Bharti Vs. Fakhrul Hassan & Ors. reported in (1976) 3 SCC 642, wherein the Apex court has held that:-

"the entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries." It has been further held that "the presumption of truth attached to the record-of-rights can rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidences to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level."

22. It is further contended that the land came into possession of the appellants in the year 1980 and since then their possession is undisturbed and continuous on account of acquiescence as well as entry in the record of Municipal Survey as well as in the creation of Jambandi, holding etc. The possession of the defendants has become adverse to plaintiffs. Even after losing the Miscellaneous Case No. 4/82 / 8/82 (Ext. B/1) preferred by the father of the original plaintiff no. 5, the plaintiffs did not approach to any competent court for filing a suit for claiming title and recovery of possession. Therefore, in view of Section 27 of the Limitation Act, 1963, their title, if any, stood extinguished.

23. Reliance has been placed in the case of Ravinder Kaur Grewal and others Vs. Manjit Kaur and others reported in (2019) 8 SCC 729 wherein in paragraph 12, it is held that

"The rightful owner does not come forward within the period of limitation his right is lost, and the possessory owner acquires an absolute title."

24. It is further contended that the plaintiffs have neither mentioned their genealogy nor they have explained that in what manner they are entitled to claim their right title and interest over the suit property. Ext. B demonstrates that the wife of Motilal Chamaria was Gomati Sethani who had also filed the case challenging the creation of Jamabandi of certain properties acquired under the Act of 1980 and had lost the case. The plaintiffs' have suppressed the said fact in their suit.

25. The other plaintiffs have never appeared as witness to support their claim in the suit which raises a presumption that the case set up by them is not correct. P.W. 6 namely, Om Prakash Singh has got himself examined as power of attorney holder of the plaintiffs which is not permissible in the eye of law. It has been held in the case of Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And

 

others reported in 2005 (2) SCC 217 which reads as under:-

“13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of- attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

26. It is submitted that the learned Trial Court has failed to give the reasoning while deciding most of the issue framed in this case. Learned trial court has given reasoning while deciding the issue related to maintainability, limitation and possession. Reliance has been placed in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad & Others reported in (2012) 4 SCC 407, wherein it has been held as follows:-

“44…... The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reason renders an order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.”

27. On the other hand, learned senior counsel Mr. Chitranjan Sinha arguing on behalf of the plaintiff-respondent nos. 1 to 4 submitted that Rai Bahadur Hurdutroy Motilal Jute Mills was a joint stock company with limited liability duly incorporated under the Indian Companies Act, 1913. The Company purchased 17 bighas, 04 kathas and 03 dhurs of land situated in Mauza - Daharia, Pargna Kumaripur, Katihar, District- Purnea vide registered sale deed dated 18-04-1935 (Ext. 12). The land was situated in Khewat No. 10, Khata No. 216, Tauzi no.1172 and khesra nos. 796, 2591, 2592 and 2595.

28. It is contended that the management of the undertaking of each of the Jute Companies was taken over by the Central Govt. under the Act of 1951. For the purposes of acquisition of RBHM Jute Mills, Katihar, the Ministry of Textile, Govt. of India appointed a valuer who prepared his valuation report dated 15.02.1977 (Ext. 10) and reported as follows:-

“As desired by the Ministry of Textiles (Govt. of India), the site was inspected and my report is as follows:- The Mill is situated under the Katihar Municipality in the Katihar district of Bihar. It is about four miles from Railway. Total area appertaining to the property measures more or less 17 Bighas, 04 Kathas with a frontage of 916 ft. on the west”

29. The Government of India acquired the aforesaid Jute Company under Section 4 of the Act of 1980. The Govt. of India acquired such companies and its assets whose management was already under control of the Govt. of India under the Act of 1951. Rai Bahadur Motilal Chamaria purchased the land in question in individual capacity vide registered sale deed dated 04/08/1954 (Ext. 5 & 5A) divided in two parts, one part being of 12.91 acres equivalent to 30 Bighas and 17 kathas and another being 2.09 acres equivalent to 05 bighas on a consideration amount of Rs. 20,000/-. This land was situated in Mauza-Durgapur, Pargna-Haveli, P.S.-Katihar, District -Purnea having khata no. 87 (part) and khesra nos. 651/P, 652/P, 653, 654, 655, 656/P, 825, 826, 827, 828, 829/P (Exhibit 5A).

30. After purchasing the suit land on 04/08/1954 (Ext. 5/A), a separate Jamabandi bearing Jamabandi no. 76 was created in the name of Motilal Chamaria, which was carved out of Jamabandi no. 900. The said Motilal Chamaria used to pay rent to the Government. It is further contended that the said Property was never taken over under the Act of 1980. The plaintiffs are in actual possession of the suit property. Even Boundary of both the properties are different. It is submitted that Motilal Chamaria died in the year 1967 and after his death, Smt. Sheela Devi Chamaria, (original plaintiff no.1) the wife of Motilal Chamaria came in possession over the land. The land has got no connection with the RBHM Jute Mills.

31. It is submitted that under the object and intent clause of the Act of 1980, it was clearly declared that management of the undertakings of these Jute Companies were already taken over by the Central Government under the Act of 1951. Section 2 of the Act of 1951 provides a declaration by the legislature that it is expedient in public interest that the Union should take under its control the industries specified in First Schedule. Entry-23 (2) of the First Schedule of the Act of 1951 includes textiles made, wholly or in part of jute, including jute twin and rope.

32. From perusal of the statutory provision, it is very much clear that the land purchased by Motilal Chamaria vide sale deed dated 04.08.1954 (Ext. 5/A) could not have been made by the Company because the management of the Company was already taken over in the year 1951 under the Act of 1951. Moreover from the bare perusal of the sale deed of 1954, it is clear that the sale deed is not in the name of the Company, rather, it is in the name of Motilal Chamaria.

33. The Government of India acquired such Jute Companies under Section 4 of the Act of 1980, meaning thereby that the Government of India acquired such Companies and its assets, whose management was already under control of the Government of India under the Act of 1951.

34. The valuation report prepared by the valuer appointed by the Government of

 

India clearly provides the area of the Mill land to be 17 bighas and 04 kathas, which is in consonance with the deed of 18.04.1935 whereby the Company had purchased the land for the purpose of setting up the mill and certainly it is different from the suit land, which is having an area of about 35 bighas or 15 acres.

35. It is submitted that without giving notice to Motilal Chamaria or his heirs, a wrong municipal survey record was prepared with respect to the suit land on wrong notion that whatever property held by Motilal Chamaria, was belonging to RBHM Jute Mills, Katihar. When the wife of Motilal Chamaria was threatened with dispossession, she filed Title Suit No. 158/2011 in the Court of Sub-Judge-1, Katihar. During the pendency of the suit, she died on 18.03.2015 and was represented by her heirs.

36. Learned senior counsel submitted that the learned trial court has rightly held that the defendants have not produced any document to show that the suit land was also ever acquired by the Govt. of India under the Act of 1980. They have only relied upon mutation made pursuant to Municipal survey and the Revenue Receipts and other documents which are of after filing the suit. DW-1, namely, Sushil Kumar Sinha, has stated that Motilal Chamaria was the landlord and he could not tell as to which property was purchased by him for RBHM Mills and which was for his personal use.

37. DW-2, Manish Kumar Choudhary, has stated during the cross examination that the suit land does not bear any building and structure and the same is an open land and the suit land is 200 meters away of the Jute Mill and the Jute Mill is surrounded by its boundaries and between the land of Jute Mill and the suit land, there is a Railway line and no work of Jute Mill is being run on the suit land which has different boundary from the campus of the Jute Mill.

38. DW.-5 namely, Jai Prakash Rai, who is the Chief Executive Officer of RBHM Jute Mills, Katihar has stated that the suit land was recorded in the name of Darshan Sah College and revenue was also being paid by the said college. He stated that the valuation report bears the land 17 bighas, 04 kathas and in the said land, the mill, plant etc. were situated and the suit land is other than the said land of 17 bighas, 04 Kathas of the Jute Mill.

39. It is submitted that the learned trial court has rightly considered the oral evidence of PWs and DWs and also considered the documentary evidences including the sale deed of 1954 and came to the conclusion that the suit land was never purchased in the name of RBHM Jute Mills rather it was purchased in the name of Motilal Chamaria and there is nothing on record to show that how the title of the suit land was transferred to RBHM jute Mills. The learned court has rightly held that under the Act of 1980, the assets of the RBHM Jute Mills was vested in the Government and not the other personal property of the owner of the said jute mill. The learned Court below also held that mere mutation or entry in Khatiyan is not the exclusive proof of ownership of the defendant over

 

the said property. The learned Court below also relied upon the judgment of this Hon'ble Court in the case of Smt. Shashikala Vs. the State of Bihar & Anr. reported in (2019) 1 BLJ PHC 597 in which the Hon'ble Court has held that the entry in khatiyan is always rebuttable in nature and mere entry in survey khatiyan does not extinguish the title of the rightful owner.

40. Learned senior counsel on behalf of the respondents submitted that in case of Salmon vs. Salmon & Co. Ltd, reported in 1897 AC 22 the house of lords has held that by registration under the Companies Act, a company becomes vested with the corporate personality, which is independent of and distinct from its members. This law has been followed till date in India. Therefore, the land purchased in the individual name of Motilal Chamaria doesn't become the property of RBHM, Jute Mills which was a company registered under the Companies Act, 1913. Mere identification of Motilal Chamaria as mill owner and Banker in the recital of the sale deed doesn't make the property to be the property of the jute mill. A basic difference between the deed of 1935 and the deed of 1954 is that the deed of 1935 is in the name of company whereas the deed of 1954 is in the name of Motilal Chamaria. It is further submitted that the claim of the defendants-appellants is based upon the entry in Municipal Survey Khatiyan and the learned trial court has rightly relied upon the judgments of this Court in the case of Smt. Shashikala (supra). The finding of this Court is based upon a Full Bench judgment of this Court in the case of Nand Kumar Rai & others Vs. State of Bihar & others reported in AIR 1974 Pat 164 (Full Bench) paragraph 24 wherein it has been held that entry in Khatiyan is always rebuttable. Moreover, there is no document on record to suggest that the suit property was ever acquired/taken over along with the jute mill and its accessories. The jute mill is existing on the land purchased through sale deed dated 18.04.1935 (Ext.-12). It is apparent from the sale deed dated 18.04.1935 read with valuation report (Ext.-10) as well as the Nationalization Act that 17 Bigha and 4 Kattha of land which is the same property as mentioned in the sale deed dated 18.04.1935 was acquired/taken over as per the Nationalization Act and the suit property was never a part of the Nationalization Act. The plaintiffs are not claiming any right on the property as per the sale deed dated 18.04.1935. The appellants have not produced any documents before the trial court to establish their claim as to how they acquired the suit property. They didn't even produce the inventory list by which the assets of the company were vested in the Central Government under the Act of 1980.

41. On the other hand, respondents had exhibited the valuation report dated 15.02.1977 (Ext.-10). Learned senior counsel further submitted that during the course of arguments the learned counsel for the appellants took the plea of adverse possession. This plea of adverse possession is against their own case in their written statement wherein they had claimed title over the land; plea of adverse possession and title cannot be taken simultaneously. This question has been considered by the Hon'ble Supreme Court in the case reported in AIR 1996 SC 910 [Mohan Lal (deceased) through his Lrs. Kachru and Others versus Mirza

Abdul Gaffar and Another]. So far the suit is barred by limitation and the plaintiffs had no cause of action to file the suit in the year 2011, this plea is also closely related with the plea of adverse possession. It is submitted that respondents had filed the suit for confirmation of possession and not for recovery of possession and as such the provision of Limitation Act would not come in the way. It is submitted that the suit was filed within the statutory period of limitation as there could be no right to file suit until there is an approval of the right asserted in the plaint and its infringement or at least a clear and unequivocal threat to infringe that right by the defendants against whom the suit is instituted. In the present suit, the defendants-appellants threatened to dispossess the plaintiffs-respondents from the suit land on 01.04.2011, then only the present suit was filed. This issue has been considered by the Hon'ble Apex Court in the case of Daya Singh and another vs. Gurdev Singh (Dead) by LRS. And others reported in (2010) 2 SCC 194 and paragraph nos. 14 to 16 of the judgment reads as follows:-

“14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in Bolo v. Koklan [(1929-30) 57 IA 325 : AIR 1930 PC 270] . In this decision Their Lordships of the Privy Council Council observed as follows: (IA p. 331)

“...There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808] in which this Court observed: (AIR p. 810, para 7)

“7. … The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.”

In C. Mohammad Yunus [AIR 1961 SC 808] , this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. Keeping these principles in mind, let us consider the admitted facts of the case. In Para 16 of the plaint, it has been clearly averred that the right to sue accrued when such right was infringed by the defendants about a week back when the plaintiffs had for the first time come to know about the wrong entries

 

in the record-of-rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on 21-8-1990. According to the averments made by the plaintiffs in their plaint, as noted hereinabove, if this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants when they refused to admit the claim of the appellants i.e. only seven days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in Para 16 of the plaint, the suit was filed. Therefore, the suit which was filed for declaration on 21-8-1990, in our view, cannot be held to be barred by limitation."

42. The notification dated 18.08.1978 was produced before this Court during the course of argument to support the plea that the Management of Jute Mill was taken over in 1978. Since the aforesaid notification was neither exhibited nor was part of the record before the trial court, therefore, no reliance can be given to such a notification. Moreover, the said notification has nothing to do with the suit property in question. The name of entity as mentioned in the said notification dated 18.08.1978 is different from the property of RBHM Jute Mills.

43. On the other hand, learned counsel for the respondent no. 5-Union of India has adopted the argument placed by the appellants in this case. It is submitted that after the vesting of suit land under the Act of 1980, the said land was mutated in the name of the appellant vide Mutation Case No. 87 of 1983-84 and this order was never challenged by the heirs of Motilal Chamaria and the same has attained finality. The Municipal Survey was conducted in the year 1982-83 and the said Municipal Survey Khatiyan published in the year 1985, one Gomti Sathani wife of Motilal Chamaria and one Vijay Kumar Chamaria challenged the entry in the Survey Khatiyan vide Miscellaneous Case No. 08 of 1982/11 of 1982 and 04 of 1982/08 of 1982 which were dismissed by order dated 07.02.1983. Both the orders passed in aforementioned Miscellaneous Case were never challenged by both the persons. It is submitted that learned trial court has failed to consider that the appellants name were entered on the basis of spot identification and it was found that there is school and hospital over the suit land under the possession and control of RBHM Jute Mills and the employees of the said school and hospital are employees of the Jute Mill. It is further submitted that the suit land is very much part of the assets of RBHM Jute Mills and after the Act of 1980, all the assets of RBHM is vested in the appellants.

44. Learned counsel for the respondent no. 5 further submits that learned trial court has relied upon the valuation report which is exhibited as Ext.-10 and was under objection. However, the learned trial court has recorded no finding as to the veracity of the said valuation report and without going into the issue with regard to the authority of the valuer has held that the said document shows only 17 Bigha and 14 Kattha in the name of RBHM, which is not correct appreciation of the evidence as the said document was not put to any test. Therefore, the

 

impugned judgment and decree is liable to be set aside.

45. On the basis of rival contentions of the parties following points are formulated for considerations:-

(i) Whether the land in suit was part of acquired land of the RBHM Jute Mills, Katihar under the Act of 1980 and its assets and the management of the undertaking of the jute companies was taken over by the Central Government under the Act of 1951?

(ii) Whether the land in suit was under the management of the undertaking of the Jute Mill by the Central Government under the Act of 1951?

(iii) Whether the land purchased through the registered sale deed dated 04.08.1954 was purchased under individual capacity or under the management of the undertaking under the Act of 1951?

(iv) Whether in absence of any inventory prepared at the time of acquisition or balance sheet it can be held that the land in the sale deeds dated 04.08.1954 was purchased from the income of the Mill?

(v) Whether the suit is maintainable in view of provision envisaged in Section 30 of the Act of 1980 ?

(vi) Whether the suit is barred by law of limitation?

(vii) Whether the plaintiffs are entitled to decree for declaration of title and confirmation of possession over the suit land and permanent injunction?

(viii) Whether the judgment and decree passed by learned trial court below are sustainable in the eye of law?

FINDINGS

46. The Title Suit No. 158 of 2011 was filed for declaration of title and confirmation of possession of the suit land and also for decree of permanent injunction for restraining the defendants from interfering into the peaceful possession of the plaintiffs over the suit land. The claim of the plaintiffs is that the suit land is inherited by the plaintiffs and they are continuing in possession thereof. The husband of the plaintiff no. 1 (Sheela Devi), namely, Motilal Chamaria purchased 15 acres of land through registered sale deed dated 04.08.1954, after the Jute Mill fell under the ambit of the Act of 1951 being managed by the Central Government. The case of the defendants is that prior to nationalization, the Rai Bahadur Hurdutroy Motilal Jute Mills (RBHM Jute Mills Private Ltd) became sick and was referred to Board of Industrial and Financial Reconstruction (BIFR). The Central Government in exercise of its powers conferred by Clause A of Section 1 of Section 18AA of the Act of 1951 took over the management of the said RBHM Jute Mills Pvt. Ltd. Subsequently under the provision of the Act of 1980, RBHM Jute Mills Pvt. Ltd. was nationalized and was vested in N.J.M.C w.e.f. 21st December 1980 with all its assets and liabilities,

 

and its Entry no. is 23(ii) of Schedule 1 of the Act of 1951.

47. To appreciate the matter and for determination of points involved in this appeal, it is important to go through the relevant provisions of the Act of 1980 and the Act of 1951 which are as follows:-

"Industries (Development and Regulation) Act, 1951-

Section 1(3):- It shall come into force on such date as the Central Government may, by notification in the official gazette, appoint.

The said act was notified in the official gazette on 8th May, 1952 vide Notification no. S.R.O. 811(E) dated 08.05.1952 [Gazette of India Extraordinary Part II Section 3(i)]

Section 3(bb):- Existing Industrial undertaking means:-

(a) in the case of an industrial undertaking pertaining to any of the industries specified in the First Schedule as originally enacted, an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement, and

(b) in the case of an industrial undertaking pertaining to any of the industries added to the First Schedule by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment; (inserted by the Act of 26 of 1953, S.2 w.e.f. 01.10.1953.)

Section 3(d):-industrial undertaking" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government,

Section 18AA:- Power to take over industrial undertakings without investigation under certain circumstances.—(1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that—

(a) the persons in charge of such industrial undertaking have, by reckless investments or creation of incumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public,

It may, by a notified order, authorise any person or body of persons (hereafter referred to as the "authorised person") to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

First Schedule:-Any industry engaged in manufacture of production of any of the articles mentioned under each of the following headings or sub-headings, namely:-

23. Textiles (including those dyed, printed or otherwise processed)-

(2) Made wholly or in part of jute, including jute twine and rope.

(3) Made wholly or in part of the wool, including wool tops, wollen yarn, hosiery, carpets and druggets;

(4) Made wholly or in part of silk, including silk yarn and hosiery;

(5) Made wholly or in part of synthetic, artificial (man-made) fibers, including yarn and hosiery of such fibers."

"The Jute Companies (Nationalization) Act, 1980

Section 2(c):- "jute companies" means the companies (being companies as defined in the Companies Act, 1956 [1 of 1956]) specified in the First Schedule;

Section 2(d):- "Jute Manufactures Corporation" means the National Jute Manufactures Corporation Limited, a company incorporated and registered under the Companies Act, 1956 (1 of 1956);

Section 3:- Transfer to, and vesting in, the

Central Government of the undertakings of the jute companies.—On the appointed day, the undertakings of every jute company, and the right, title and interest of every jute company in relation to its undertakings shall, by virtue of this Act, stand transferred to, and vest in, the Central Government

Section 4(1):- General Power of vesting.—

(1) The undertakings of each jute company shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of the jute company, whether within or outside

 

India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities specified in sub-section (2) of section 5.

Section 9:- Management, etc., of the undertakings of the jute companies.—The general superintendence, direction, control and management of the affairs and business of the undertakings owned by each of the jute companies, the right, title and interest in relation to which have vested in the Central Government under section 3, shall, where a direction has been made by the Central Government under sub-section (1) of section 6, vest in the Jute Manufactures Corporation and thereupon the Jute Manufactures Corporation shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things in relation to each such undertaking as the jute company which owned it was authorised to exercise and do immediately before the appointed day.

Section 30:- Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Jute Manufactures Corporation or other person authorised by that Government or Corporation for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any of its officers or other employees or the Jute Manufactures Corporation or any officer or other person authorised by that Corporation for any damage caused or likely to be caused for anything which is in good faith done or intended to be done under this Act.”

THE FIRST SCHEDULE

[See sections 2(c), 7, 8 and 15(I)(a)]

SI.

No.

Name  of the Jute company

Amount  (Rupees in lakhs)

1.

Alexandra Jute Mills Limited, Chartered Bank Buildings, 4 Netaji Subhas Road, Calcutta-700001

353.60

2.

Union Jute Company Limited, Chartered Bank Buildings, 4 Netaji Subhas Road, Calcutta-700001

461.32

 

3.

Khardah Company Limited, 7, Red Cross Place, Calcutta-700001

486.68

4.

The Kinnison Jute Mills Company, Chartered Bank Buildings, 4, Netaji Subhas Road, Calcutta-700001

644.70

5.

R.B.H.M. Jute Mills Private Limited, P.O. Katihar Mills, Katihar (Bihar)

17.04

48. The Act of 1951 is one of the important Acts of Indian legislature that was passed in 1951 called as the Industries (Development and Regulation) Act. Controlling and directing the growth of the nation's industries is the main goal of the Industries (Development and Regulation) Act to promote fair resources and controlling industrial expansion. The Act provides for the license of certain industries which amounts that specific industries require prior approval from the Government to set up or expand their operation. The Act provides that a Government authority to create and run industries that it thinks it in the best interest of the general public. It gives the government the authority to step in and take the require measures to stop the concentration of economic power in a small number of hands.

49. Rai Bahadur Hurdutroy Motilal Jute Mills is a schedule industry which was undertaken under the Act of 1951. The said Act came into force on 8th May 1952.

50. The said undertaking by virtue of the Act of 1980 vested in the Central Government with regard to right, title and interest of every jute company in relation to its undertakings include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of the jute company, whether within or outside India.

51. In view of the aforesaid two Acts, the Act of 1951 and the Act of 1980, it would be relevant to consider firstly, Point No. (i), Point No. (ii), Point No. (iii) and Point No. (iv).

52. It is the admitted fact that the management of M/s Rai Bahadur Hurdutroy Motilal Jute Mills Pvt. Ltd. (RBHM Jute Mills, Katihar) was taken over by the Central Government under the Act of 1951 and later on, the acquisition and

 

transfer of the undertakings of the Jute Mill was vested in the Central Government by the Act of 1980 w.e.f. 21st December 1980. RBHM Jute Mills, Katihar was engaged in the manufacture and production of articles mentioned in the First Schedule to the Act of 1951. The name of RBHM Jute Mills, Katihar is mentioned in First Schedule of the Act of 1980, in exercise of the powers conferred by Clause (b) of sub-section 1 of Section 18AA, of the Act of 1951. At the time of vesting of the undertakings of the companies in the Central Government, the Ministry of Textile, Government of India, appointed a Valuer, who prepared its Valuation Report on 15-02-1977 (Exhibit 10). The first paragraph of the report of the Valuer is reproduced herein below:-

"As desired by the Ministry of Textiles, (Government of India), the site was inspected and my report is as follows:-

The mill is situated under the Katihar Municipality in Katihar District of Bihar. It is about one mile from Katihar Railway Station. It is built and bounded as under:-

On the North

By District Board Road,

On the South

By Railway sliding N.F Railway and Godown of Food Corporation of India,

On the East

By Municipal Concrete Road,

On the West

By NF Railway line.

The land area appertaining to the property measures more or less 17 Bighas four Kathas i.e. 344 Kathas with a frontage of 916 feet on the west."

53. The Government Valuers assessed the total cost of RBHM Jute Mills, Katihar, including land, building and other structure, furniture and fixtures and machineries as they were on 15-02-1977, amounting to Rs. 3,51,13,000/-. The RBHM Jute Mills had purchased the land for the purpose of setting up the Mill on 18-04-1935 through registered sale deed admeasuring 17 Bighas and 4 Kathas. The said registered sale deed was executed in favour of Rai Bahadur Hurdutroy Motilal Jute Mills Limited, a joint-stock company with limited liability, duly incorporated under the Indian Companies Act, 1913 and having its registered office at No. 100, Clive Street in the town of Calcutta. It is apparent from the sale deed dated 18-04-1935 (Exhibit 12) that the same is in the name of Jute Mills Company which has been taken over under the Act of 1980 whereas, the sale deed dated 04-08-1954 was executed in favour of Rai Bahadur Motilal Chamaria, son of Shri Hurdut Rai Chamaria, (deceased) by profession, Mill owner, Banker etc., resident of 60/2 Lake Road, Calcutta, through his Manager holding General Power of Attorney Shri Ram Kumar Sakseria, son of late

 

Sagarmal. The said land was purchased in the name of Rai Bahadur Motilal Chamaria in personal capacity whereas, Exhibit 12 sale deed dated 18-04-1935 was executed in favour of Rai Bahadur Hurdutroy Motilal Jute Mills Ltd., a joint stock company with limited liability.

54. Thus, it is clear from both the sale deeds that one was purchased in the name of Company and another one was purchased in the personal capacity. The Exhibit 12 i.e., registered sale deed dated 18-04-1935 and Exhibit 5/A dated 04-08-1954 are purchased through different status. Moreover, the appellants have failed to prove that the sale deed dated 04-08-1954 (Exhibit 5/A) was purchased by the company/Mill. No balance sheet of the company was produced or adduced before the trial court to demonstrate that the said purchase was made by the Company. Apart from this, the Government Valuer Report does not disclose the land in-question in its report. Therefore, there is no question of vesting of the suit land under the Act of 1951 or in exercise of power conferred by Clause (b) of sub-section 1 of Section 18AA of the Act of 1951. Therefore, the suit property could not presume to be vested Suo motu only mentioning the name of Rai Bahadur Motilal Chamaria, profession as Mill owner. The registered sale deed dated 04-08-1954 was prepared in personal capacity and not under the management of undertakings under the Act of 1951.

55. So far point no. (v) is concerned, since the property in suit is not vested under the Act of 1980 nor was taken over by the Central Government under the Act of 1951 and its Entry No. 23(2) of the First Schedule, Section 30 of the Act of 1980 is not applicable. Therefore, the suit is maintainable on its own merit.

56. Point no. (vi) & (vii):- The plaintiffs/respondents have a specific case to the effect that the plaintiffs are in possession of the suit land on the basis of sale deed dated 04.08.1954 and there is specific pleading to this effect and there are specific evidence in deposition of witness that the plaintiffs are in possession of the suit land and the jute mill has absolutely no concern with the land in question. D.W.-2 as well as D.W.-3 in their deposition have accepted the possession of the plaintiffs/respondents. Similarly, P.W.-1 and P.W.-5 have also deposed to the effect that plaintiffs/respondents are in possession of the suit property. The witnesses have also stated that the suit land is almost 200 meters away from the jute mill and the jute mill is existing on the description of the land as mentioned in registered sale deed dated 18.04.1935. The claim of the defendants/appellants is based upon the entry in the Municipal Survey Khatiyan. It is settled law that Revisional or Municipal Survey entry neither creates nor extinguishes title and as such, they have no documents of title rather they are claiming title on the basis of entry in the Municipal Survey Khatiyan. Reliance, in this connection, has been placed on the decision in the case of Nand Kumar Rai (Supra).

57. The question as to what are the effect of entry of records of title as to whether the presumption of correctness of those entries will be conclusive proof of title and possession or as to whether those presumption are rebuttable or not,

 

have been examined several times by different courts. Reliance has been placed in the case of Narshing Mishra & Another Vs. Rajendra Mishra & ors. reported in (2009) 2 PLJR 1028 as well as in the case of Smt. Shashikala (Supra). The defendants/ appellants have exhibited Municipal Survey Khatiyan of 1985 and order as Exhibit B & B1, Exhibit B1 are the certified copies of order dated 07.02.1983 passed in Case No. 8/1982 (11/82) and Case No. 04/82 (08/82) by the court of Assistant Superintendent. These documents are not the documents of title. Municipal holding tax, revenue receipts have been produced and exhibited by the defendants/appellants. The same pertained to the year 2013 i.e. after filing of the suit in the year 2011. The learned counsel for the appellants took a plea of adverse possession during the course of argument in the present First Appeal. This plea of adverse possession is against their own case as stated in their written statement wherein they pleaded for title on the one hand and adverse possession on the other. Plea of adverse possession and title cannot be taken simultaneously. This issue has been considered by the Hon’ble Supreme Court in the case of Mohan Lal (deceased) through his Lrs. Kachru (Supra).

58. The plaintiffs claimed their title on the basis of sale deed dated 04.08.1954 which was purchased by Rai Bahadur Motilal Chamaria in personal capacity and not in the name of Jute Mill Company as Rai Bahadur Hurdutroy Motilal Jute Mills, a joint stock company with limited liability, or not in the management of undertaking under the Act of 1951. The issue with regard to limitation is concerned, the appellants have also raised an issue that the suit is barred by limitation and the plaintiffs had no cause of action to file the suit in the year 2011. It is apparent from the record that the suit has been filed only for declaration of title and confirmation of possession over the suit land and also for permanent injunction restraining the defendant from interfering into the peaceful possession of the plaintiffs over the suit land. It transpires from the plaint that neither the plaintiffs have challenged the revisional survey entry nor any relief for correction in the entry for Municipal Survey Khatiyan was sought. It is trite law that the entry in record of rights do not confer title. In the case of State of H. P. Vs. Keshav Ram & others reported in (1996) 11 SCC 257, the Hon’ble Supreme Court has held that an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title. Reliance has been placed in the case of Suraj Bhan & others Vs. Financial Commissioner & others reported in (2007) 6 SCC 186, wherein the Hon’ble Apex Court has held that an entry in revenue record does not confer title on a person whose name appears in records of rights. Entry in the revenue records or jamabandi have only “fiscal purpose” i.e. payment of land revenue and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only by decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo

 

Kambekar v. Arthur Import & Export Co. (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.

59. In the light of the narrative and discussions above, in my opinion, the title of the plaintiffs is established on the basis of sale deed dated 04.08.1954. The possession of the plaintiffs is also evident from the material on records. There is material to show that the plaintiffs are in actual physical possession much less continued possession of the property in suit since the date of purchase i.e. 04.08.1954 (sale deed). Plaintiffs have succeeded in establishing their title very much before as well as after the publication of Municipal Survey khatiyan.

60. The plaintiffs were threatened with regard to their title on 01.04.2011 when the cause of action arose for the first time and the suit was filed within the statutory period of limitation from the cause of action arising for the first time and therefore, the suit is not barred by limitation.

61. Point no. (viii):- The learned court below after appreciating the facts and evidences available on record, has rightly decided the issue involved in the suit. The learned counsel for the appellants has not succeeded to convince the Court that the judgment and decree passed by the trial court is not sustainable. Learned court below has rightly decided the issues and findings given by the learned court below are quite correct and proper and there is no need of any interference by this Court.

62. Thus, it is held that the judgment and decree passed by the learned court below is fit to be affirmed. Accordingly, this point is also decided against the appellants and in favour of the respondents.

63. In the result, finding no merit in this First Appeal, the same is hereby dismissed, but under the circumstances without costs.

64. Pending interlocutory application(s), if any, shall stand disposed of.

 